THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11641 of 1998

Dated:11.04.2007

Between
P.Devendar Reddy

.....Petitioner

and

1.Presiding Officer, Industrial
Tribunal cum Labour Court,]
Warangal and others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11641 of 1998

ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to the Award made in I.D.No.45 of 1994 dated 3.1.1998 on the file of the Industrial Tribunal-cum-Labour Court, Warangal and to quash the same as arbitrary and illegal.

It appears that the petitioner was appointed as a conductor in the year 1990 in the respondent-Corporation and was attached to Warangal depot. In the year 1991, he was transferred to Parakal Depot. While so, when he was conducting the bus bearing No.AP-9Z 656 on Parakal to Gaddamutharam route, a check was exercised at stage No.9 and the checking officials found certain cash and ticket irregularities and issued a charge memo.

Basing on the charge memo, a charge sheet was issued and a detailed enquiry was conducted into the matter. Thereafter, the petitioner was removed from service with effect from 2.11.1993. Aggrieved by the same, the petitioner raised a dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 before the Industrial Tribunal-cum-Labour Court at Warangal. It was the case of the petitioner that the enquiry was not conducted properly and the evidence on record would indicate that the charges framed against him are not proved. Therefore, the removal order passed by the respondent-Corporation is arbitrary and illegal.

The respondent-Corporation filed a detailed counter before the Labour Court stating that a fair and proper enquiry was conducted into the charges levelled against the petitioner, duly following the procedure in accordance with the AP Employees (CCA) Regulations. Further, basing on the evidence

available on record, the Enquiry Officer gave a finding that the charges framed against the petitioner are proved. Therefore, the disciplinary authority on its own appreciation of the entire evidence came to the conclusion that the petitioner is liable to be removed from service. There is nothing wrong in passing such an order of removal since the petitioner involved in defrauding the legitimate revenues of the Corporation and the misconduct attributed against the petitioner is grave in nature and he does not deserve any punishment than that of removal from service.

Before the Labour Court, no oral or documentary evidence was adduced by either side. However, basing on the material placed before it, the Labour Court came to the conclusion that the domestic enquiry conducted by the Corporation was proper and valid, and that the charges levelled against the petitioner are proved and accordingly, held that the petitioner does not deserve any relief as

sought for and rejected the application. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that absolutely there was no evidence to show that the charges framed against the petitioner are proved. Insofar as the second charge is concerned, the petitioner himself accepted that there was some mistake on his part in view of the fact that there was no proper light in the bus from Stage No.6 to 9 and therefore, he did not complete the SR from Stage Nos.6 to 9. Further, absolutely, there is no evidence to show that the petitioner had instigated the passengers not to give statements. In fact, the passengers' statements were available on record and the petitioner co-operated for the same. Further, insofar as charge No.5 i.e., using unparliamentary language against the T.T.Is and also in refusing to acknowledge the receipt of the charge memo

is concerned, there is no evidence. Assuming that all these charges are proved the punishment of removal from service is disproportionate to that of the misconduct and particularly when the past service of the petitioner was unblemished. Therefore, the Labour Court erred in not properly exercising the discretionary powers vested in it under Section 11-A of the Act. Hence, the impugned award is liable to be set aside and the petitioner is entitled for reinstatement with all consequential benefits.

Learned counsel for the respondents supported the award passed by the Labour Court and contended that the charges framed against the petitioner were grave in nature. The petitioner may not have any past misconduct but that does not meant that his removal from service is disproportion to that of the misconduct alleged. There was no evidence insofar as using unparliamentary language, the T.T.Is themselves have narrated

the incident and there is no other independent witness is necessary for such an incident. Therefore, the Labour Court has rightly dismissed the application filed by the petitioner under Section 2-A (2) of the Act and no interference can be made by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material available on record.

Admittedly, the petitioner had 3 ½ years of unblemish service and this is the first misconduct of the petitioner and in his spot explanation he has categorically admitted that there was a mistake on his part in issuing some irrelevant tickets since there was no proper light, and he lost his pen, therefore, he could not close the SR from Stage No.6 to 9. Further the charge that the petitioner has instigated the passengers and created trouble

for not giving statement seem to be absolutely false, since the records placed before the Labour Court would indicate that the passengers have given their statements and the petitioner also attested the same and if really the petitioner created any scene, nothing prevented the T.T.Is from getting such a statement from any one of the passengers;

No such evidence is available. The TTIs statement was taken as a gospel truth and the petitioner was held to be guilty of the charges.

At least insofar as charge Nos.3 to 5 are concerned, they cannot be believed without there being any independent evidence. Insofar as charge Nos.1,2 and 6 are concerned, they are trivial in nature. They are in the usual course of conducting a bus. The petitioner has explained even in the spot explanation that due to poor light, he could not maintain the SR from stage No. 6 to 9. Charge No.2 is that the petitioner had issued used tickets after having collected some money from the

passengers. On a close examination of the record, it would show that against each two rupee denomination tickets the petitioner maintained SR up to stage No.5 and ticket No.051, 050 and 052 were not entered into. However, the petitioner cannot escape from his responsibility of issuing tickets properly which is the only duty a conductor is supposed to perform efficiently.

In the over all circumstances of the case, I am of the opinion that even if the 2nd charge is proved, removal from service of the petitioner is disproportionate to that of the misconduct alleged against him, particularly for the reasons that he had no past misconduct for the last 3 ½ years of service. Therefore, the impugned award passed by the Labout Court is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned award is set aside. The petitioner-workman is entitled for appointment as a fresh conductor. The respondent-

Corporation shall appoint the petitioner within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that the petitioner is not entitled for any continuity of service, back wages and other attendant benefits. No costs.

_____

11-04-2007